IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
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ORDER

S.N. Swami
vs
State of Rajasthan & Ors.

S.B. CIVL WRIT PETIITON NO.4515/1998 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 23rd August, 2006

PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.S.D. Vyas, Advocate, for the petitioner.
Mr.Rameshwar Dave, Dy. Government Advocate for the respondents.

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BY THE COURT: -

This petition has been filed by the petitioner S.N. Swami, who was retired from the post of Principal, Government College, Bikaner with the prayer that the respondents may be directed to step up his the basic pay to Rs.4,950/- with effect from 1.1.1998 with all consequential reliefs and make payment thereof together with interest and consequentially revise his pension.

The ground on which, he has filed the present writ petition is that in the seniority list published by the respondents as on 1.4.1986 when the petitioner was working as Principal, Government College, Bikaner, his name was mentioned at S.No.8 whereas the name of one Shri Y.H. Alambian was mentioned at S.No.31, who at that time was holding the post of Vice-Principal, Dungar College, Bikaner. While the petitioner retired from service on 29.2.1998 and Shri Y.H. Alambian retired on 31.10.1998. Both of them were serving under the Director of College Education, Government of Rajasthan and both retired from the post of Principal, Government Post-Graduate College and both were drawing salary in the U.G.C. Grade of RS.4500-7300 at the time of retirement. It has been averred in the writ petition that the petitioner retired from service on 29.2.1998 whereas Shri Y.H. Alambian retired on 31.10.1998. Basic-pay of the petitioner was Rs.4800/- on 1.1.1998 whereas the basic pay of Shri Y.H. Alambian was Rs.4950/- on that day. According to the decision taken under Rule 32 of the Rajasthan Service Rules, 1951, (in short the Rules of 1951) the basic pay of the junior cannot be more than the basic pay of the senior and if it is so, then the senior officer's basic pay has to be stepped up.

The Director of Pension and Education Department have

filed separate replies. The respondents no.1 and 2 (Education Department) in their reply have stated that the petitioner retired on 29.2.1998 and he cannot be permitted to raise this issue after a lapse of 10 years now. Moreover, he had alternative remedy of appeal before the Rajasthan Civil Services Appellate Tribunal and, therefore, on both these grounds they prayed for dismissal of writ petition. They have stated that Annex.1 is not a seniority list, but it is a civil list. Merely because the name of the petitioner has been shown above the name of Shri Y.H. Alambian this would not make any difference. It has been stated that the case of the petitioner is not covered under Rule 32 of the Rules of 1951. It is therefore stated that so far as Shri Y.H. Alambian is concerned, he was drawing the pay of Rs.4325/- as on 8.1.1986 in the pay scale of Rs.3700-5700 prescribed by U.G.C. whereas the petitioner was drawing his basic pay of Rs.4500 in the pay scale of Rs. 4500-7300 and, thereafter, further increment was allowed to him on 1.3.1986 and his salary was raised to Rs.4650/- and further annual grade increment was allowed on 1.3.1987 and his pay was raised to Rs.4800/-. As aghast this, Shri Y.H. Alambian was allowed annual grade increment on 8.1.1987 and his salary was fixed at Rs.4575/- and further increment was allowed on 31.3.1987 and his pay was fixed at Rs.4800/- while allowing him pay fixation under Rule 26A of the Rules of 1951 and, thereafter, his salary was further

revised on 8.1.1988. Since the petitioner retired prior to sanction of this second increment to Shri Y.H. Alambian on 31.3.1987, Shri Y.H. Alambian was in receipt of more salary at the time of retirement, although, pay of both of them was fixed in the same pay scale. The petitioner was promoted on the post of Principal on 30.5.1986 w.e.f. 19.5.1984 whereas Shri Y.H. Alambian was promoted as Principal in March, 1987 and, thereafter, the petitioner could not get any promotion and he earned only two grade increments of RS.150/- each whereas Shri Y.H. Alambian had earned not only two annual grade increments of Rs.125/- and Rs.150/- but also he had been given fixation benefit of promotion of Rs.225/- on 31.3.1987.

In the separate reply filed by the Director, Pension Welfare Department, Government of Rajasthan, it has been stated that the College Education Board was only competent to grant pay under the Rules of 1951.

Shri. S.D. Vyas, learned counsel for the petitioner has relied upon the judgment of this Court (Jaipur Bench) in S.B. Civil Writ Petition No.7931/1992 (Rohitash Kumar Sihag Vs. Rajasthan State Coooperative Bank Ltd., & Anr., decided on 22.11.1995) wherein this Court directed that the respondents to enhance the pay/salary of the petitioners so as to bring them at

par with their juniors from the date the anomaly has been created by fixing them in higher pay scale.

On the other hand, Shri Rameshwar Dave, learned Dy. Government Advocate opposed the writ petition and argued that it was not a case of pay anomaly because the petitioner stood retired prior to retirement of Shri Y.H. Alambian and, therefore, Shri Y.H. Alambian had earned two extra grade increments. He therefore, prayed that the writ petition should be dismissed.

I have considered the arguments advanced by both the learned counsel for the parties. Annex.1 which is a civil list published by the respondents themselves shows that name of the petitioner was at S.No.8 with date of his initial appointment as 7.9.1953 and date of his substantive appointment on the post of Professor/Vice-Principal as 28.7.1970. In this list, the name of Shri Y.H. Alambian, with whom the petitioner is claiming parity is also shown at S.No.31 with date of his initial appointment as 10.11.1956 and date of substantive appointment on the post of Professor/Vice-Principal as 22.5.1974. He was thus all long junior to the petitioner. The explanation given by the respondents does not appeal to the logic when they state that Shri Y.H. Alambian was promoted on the post of Principal and was drawing the basic pay of Rs.4525 on 8.1.1986 in the

pay scale of Rs.3700-57000 prescribed by U.G.C. whereas the petitioner was drawing was drawing salary as on 1.1.86 as RS.4500/- in the pay scale of Rs.4500-7300 prescribed by U.G.C. They have contended that the basic pay of the petitioner in Jan., 1986 was much higher than that of Shri Y.H. Alambian. Subsequently, the petitioner was granted annual grade increment on 1.3.1986 and his salary was raised to Rs.4650/- and further annual grade increment was allowed on 1.3.1987 and his pay was raised to Rs.4800/-. As against this, the increments were granted to Shri Y.H. Alambian on 8.1.1986 and his salary was fixed at Rs.4575/- and further increment was granted to him on 31.3.1987 and his pay was fixed at Rs.4800/-. It was at this stage that Shri Y.H. Alambian was granted benefit of pay fixation under Rule 26 of the Rules of 1951, therefore, his salary was further revised on 8.1.1988. The respondents have not given any explanation whatsoever as to when Shri Y.H. Alambian was all along drawing lesser than the petitioner salary, how possibly on 8.1.1988 he was fixed at higher pay scale of Rs.4950/- when at the same time, the petitioner was still being paid at Rs.4800/-. If the benefit of pay fixation under Rule 26A was given to Shri Y.H. Alambian no explanation has been given why such benefit was not extended to the petitioner when according to the pleadings in the reply of the respondent in para no.5 he was also promoted on the post of Principal on

30.5.1986.

In these circumstances, it is evidently clear that it was a case of pay anomaly, which the respondents were required to rectify and they have not rectified. The petitioner was thus deprived of the benefit, which otherwise should have been given to him. I may in this connection refer to the following observations made by this Court in S.B. Civil Writ Petition No.285/1987, decided on 24th Sept., 1992 : -

> "In the matter of pay fixation and the emoluments the doctrine of equality demands that persons similarly situated must receive equal wages. The logical extension of this principle is that a senior person must be paid wages at-least at par with the junior if not higher. It will be a clear negation of the concept of equality if senior person is paid lesser than a junior person. This is precisely what has happened in the present case. The petitioner, though, admittedly senior, is being paid less salary than his junior persons and the anomaly which is strakingly apparent has not been removed merely because, the provisions of rule-32 of the Rules of 1951 are said to be inapplicable. That, in my opinion, is no reasons for denying the benefit of salary to the petitioner at part with Shri Manak Chand Jain and Shri P.L. Chatar. Failure of the respondent Bank to enhance pay of the petitioner so as to bring it at par with the pay of Shri Manak Chand Jain and Shri P.L. Chatar has clearly resulted in infringement of a right of equality of the petitioner under Articles 14 and 16 of the Constitution of India."

A reference may also be made to a recent Division Bench judgment in Rikhab Raj Kumbhat Vs. State of Rajasthan & Ors

reported in 2006(3)RLW 1715 in which the Division Bench in para no.13 observed as under: -

> "(13) The rule apparently has been framed to protect the pay of the government servant who though senior to his junior counterpart gets a lower pay-even though for a temporary period, merely because his due date of increment happens to be later. If the object was to protect the pay of the senior government servant, strict compliance of the other condition that the pay of the junior should be less in the existing pay scale, may render the object haywire. Where a literal interpretation is likely to defeat the purpose of any enactment or rule, it is permissible to read down the provision so as to achieve the purpose. The possibility of two government servants drawing maximum pay in the existing scale of pay cannot be ruled out and therefore, if rule 14 were to be strictly followed, and the second condition were to be strictly enforced, the senior government servant may not be able to get the benefit of pay protection under rule 14(1). Where the pay of both of them was fixed at the same stage, it would still result in anomaly if the junior government servant gets more pay earlier merely because he post-poned. The due date of increment is fixed under the rules, namely,the Rajasthan Service Rules and the right of the person to get the increment on the due date which flows from the rule cannot be denied to him. ***The only option available to the authority is to prepone the due date of increment of the senior government servant by stepping up his pay/date of increment, in order to remove the anomaly."***

In the result, the writ petition filed by the petitioner is allowed. The respondents are directed to step up the pay of the petitioner at par with Shri Y.H. Alambian from the date the

anomaly has arisen and pay him all consequential benefits and revised his pension accordingly and also pay the arrears of the pay and pension etc. together with interest @ 6% per annum within a period of three month from the date of receipt a copy of this order.

There shall not be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-